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Before the
Federal Communications Commission
Washington, D.C. 20554

3-210

MM Docket No. 93-279 ✓

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Cal-Nev-Ari, Nevada)

RM-8368

NOTICE OF PROPOSED RULE MAKING

Adopted: October 20, 1993; Released: November 12, 1993

Comment Date: January 3, 1994

Reply Comment Date: January 18, 1994

By the Assistant Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Richard W. Myers ("petitioner") requesting the allotment of Channel 285A to Cal-Nev-Ari, Nevada, as its first local aural transmission service. Petitioner states that it will apply for the channel, if allotted.

2. Petitioner acknowledges that Cal-Nev-Ari is not listed in the U.S. Census or incorporated.¹ It contends, however, that it is a viable community for licensing purposes, with a permanent population of approximately 300 persons. According to the petitioner, Cal-Nev-Ari is a geographically distinct community, bounded on all sides by federal government land. Further, petitioner states that the nearest communities with significant populations are over 25 miles away to the south and 45 miles to the north. Petitioner states that Cal-Nev-Ari has a lighted airstrip which is used by many of the local residents, a volunteer fire department, post office, 24-hour casino/restaurant, gasoline station, grocery store, restaurant, bar, motel and a RV park which accommodates overnight visitors and "snowbirds." Other essential services, such as police protection and schools, are provided by the county, not by a neighboring community. In addition, road signs identify Cal-Nev-Ari along U.S. Route 95. Petitioner states that the station would serve, and derive economic support from, the thousands of travelers along adjacent U.S. Route 95 and nearby Nevada Route 163, in addition to the residents of Cal-Nev-Ari.²

¹ According to the petitioner, Cal-Nev-Ari is listed in the November 1990 Populated Places Listing published by the Department of Commerce.

² Petitioner reports that the 1992 Nevada State Highway Department estimates that approximately 6,485 vehicles pass Cal-Nev-Ari on Highway 95 every day. He also points out that the Commission has allotted channels to small communities which are primarily used to provide service to travelers, citing *Yermo and Mountain Pass, California*, 45 R.R. 2d 58 (1979).

³ We note that Cal-Nev-Ari is listed in the 1993 Rand McNally Commercial Atlas and attributed with a population of 300.

3. Section 307(b) of the Communications Act of 1934, as amended, mandates that the Commission fairly, equitably, and efficiently distribute frequencies " . . . among the several States and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to demonstrate its status. Cal-Nev-Ari is not listed in the U.S. Census.³ According to the petitioner, Cal-Nev-Ari appears in a 1990 Commerce Department listing of populated places. However, the staff has been informed that Cal-Nev-Ari is not a recognized community by the U.S. Census Bureau. Further, the petitioner does not provide any supporting information about the Commerce Department report to which it alludes, such as the purpose of the listing and what criteria the Commerce Department utilizes before finding that a place should be included in the listing. Therefore, the petitioner should present the Commission with sufficient information to demonstrate that Cal-Nev-Ari has social, economic, cultural, or governmental indicia to qualify it as a "community" for allotment purposes. With the exception of the casino, none of the businesses or organizations are specifically identified with names and addresses or shown to be intended to serve Cal-Nev-Ari as opposed to some other area.⁴ See, e.g., *Beaver Springs, Pennsylvania*, 4 FCC Rcd 5373 (1989), *Sargent, Nebraska*, 4 FCC Rcd 3933 (1989), *Bartow, Georgia*, et al., 4 FCC Rcd 6876 (1989), *East Hemet, California*, et al., 4 FCC Rcd 7895 (1989), and *Ellwood, California*, 50 Fed. Reg. 13031, published April 2, 1985.

Engineering Analysis

4. Channel 285A can be allotted to Cal-Nev-Ari in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.6 kilometers (1.6 miles) southeast to avoid a short-spacing to Station KJUL, Channel 282C, North Las Vegas, Nevada.⁵ Concurrence by the Mexican Government is required since Cal-Nev-Ari is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

5. We believe the petitioner's proposal to provide Cal-Nev-Ari with its first local aural transmission service, should it ultimately be deemed a community for allotment purposes, warrants further consideration. Therefore, we invite comments on the proposal, as indicated *infra*.

6. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Present	Channel No. Proposed
Cal-Nev-Ari, Nevada	--	285A

However, mere geographical location is not sufficient to establish "community" status. See, *Vimville, Mississippi*, 48 FR 5974 (1983), *Hannibal, Ohio*, 6 FCC Rcd 2144 (1991), and *Columbia, California*, 56 FR 26357 (1991), 6 FCC Rcd 3292 (1991).

⁴ For example, petitioner states that the Police Department, Aviation Club, and AmVets frequently meet in Cal-Nev-Ari. However, Cal-Nev-Ari does not have a local police force and thus it appears that the meetings are held there simply because of the convenience of the location.

⁵ The coordinates for Channel 285A at Cal-Nev-Ari are North Latitude 35-17-12 and West Longitude 114-51-57.

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **January 3, 1994**, and reply comments on or before **January 18, 1994**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Peter Tannenwald, Esq.
 Kathleen L. Franco, Esq.
 Arent Fox Kintner Plotkin & Kahn
 1050 Connecticut Avenue, N.W.
 Washington, D.C. 20036-5339
 (Counsel to petitioner)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Victoria M. McCauley
 Assistant Chief, Allocations Branch
 Policy and Rules Division
 Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate

of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

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